IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3387 of 2002

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

PRAJAPATI MAHENDRAKUMAR BECHARBHAI

Appearance:

GOVERNMENT PLEADER for Petitioner No. 1

MR SHASHIKANT S GADE for Respondent No. 1

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 19/03/2002

ORAL JUDGEMENT

#. Rule returnable today. Learned advocate Mr.SS Gade appears for and waives service on behalf of the respondent workman.

#. With the consent of the learned advocates, the petition is heard and finally disposed of today.

#. The petitioner, the Deputy Executive Engineer in the Government of Gujarat challenges the judgment and award dated 30th January, 2001 passed by the Labour Court, Himmatnagar in Reference LCH No.699/1996.

#. The respondent workman raised an industrial dispute, which was referred to the Labour Court, Himmatnagar and registered as Reference LCH No.699/1996. It was the claim of the workman that he had been serving under the petitioner herein for more than 10 years as Daily Wage Guard. Though he had continuously served for 10 years and he had served for more than 240 days each year. The petitioner had discharged him from service on 20th May, 1993 without any valid reason and without following due procedure. The claim made by the petitioner was contested by the petitioner herein. It was denied that the workman had served for 10 years as averred. It was stated that in all the workman had served for 4 years and 9 months over a period from the year 1984 to the year 1993. The workman had not completed 240 days' service during any period of 12 months. The workman had been paid wages for the days he was engaged. Since the month of May, 1993 the workman had voluntarily ceased to report for duty. It was denied that the workman was discharged from service or that his service was terminated in any manner. It was also suggested that during the intervening period the workman was driving vehicle and was not interested in the service.

#. The Labour Court, considering the evidence on record, was pleased to allow the reference and to direct reinstatement of the workman in service with full back wages. Feeling aggrieved, the petitioner has preferred the present petition.

#. The finding recorded by the Labour Court with respect to the termination of the service of the workman is not supported by any documentary evidence. It appears that the plea raised by the petitioner that the workman had voluntary ceased to report for duty has not been considered at all. The finding regarding workman completing 240 days' service recorded by the Labour Court is also contrary to the records. Moreover, it is apparent that though the workman had complained that his service was terminated in the month of May, 1993, the industrial dispute was not raised until the year 1995. The necessary inference, therefore, should be that the

workman was not interested in employment as daily wager. Further, if the workman had voluntarily ceased to report for duty, the award of back wages is not at all justified.

#. In the above circumstances, the petition is partly allowed. The judgment and award of the Labour Court, Himmatnagar dated 30th January, 2001 passed in Reference LCH No.699/1996 is partially quashed and set aside in so far as it directs the payment of back wages to the workman. As regards the reinstatement of the workman in service, no interference is warranted since there was no order of termination of service by the petitioner. It is, therefore, observed that as and when the workman reports for duty the petitioner should engage him on daily wages on the available work. Rule is made absolute to the above extent. There shall be no order as to cost.

(Ms. R.M.Doshit, J.)

/sakkaf